IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1788 OF 2005

Shri. Krishna Ashok Bhise ...Petitioner

Versus

The State of Maharashtra ...Respondent

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Mr. P.D. Gharat, Advocate for Petitioner

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 21ST JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioner has preferred this petition for quashing of chapter proceedings relating to chapter case No. 8 of 2005 which was initiated by the Special Executive Magistrate, Dadar, Mumbai. The said proceedings are under Section 107 of Cr.P.C.

3. The learned advocate for the petitioner has submitted that in the said case an interim bond has been obtained from the petitioner. He has further submitted that as the chapter proceeding have been initiated under Section 107 of Cr.P.C. no interim bond could have been obtained from the petitioner. He has submitted that it is clear from Section 116(3) of Cr.P.C., that interim bond can be obtained only in

a case falling under Section 108, 109 and 110 of Cr.P.C. Hence, he has submitted that obtaining an interim bond in such case is illegal and the order relating to interim bond ought to be quashed and set aside.

4. Looking to the provisions of Section 116(3) of Cr.P.C. it is clear that the Magistrate is empowered to direct a person to execute interim bond for maintaining good behaviour where the proceedings are taken against such person under Section 108, 109 or 110 of Cr.P.C. only. The same view has been taken by this Court (Coram: B.V. Chavan, J.) in the case of **State of Maharashtra & Anr Vs. Mangali Dewaiyya Pupalla, reported in 1993 (1) Bom.C.R. 115.**

5. In this view of the matter, it is clear that interim bond in the facts of this case could not have been obtained from the petitioner and hence, the said order deserves to be quashed and set aside. Accordingly, the said order is quashed and set aside.

6. Thereafter, the learned advocate for the petitioner has submitted that looking to the facts of this case it cannot be said that there is possibility of breach of peace or possibility of disturbing the public tranquillity and hence, in such case the proceedings against the petitioner under Section 107

of Cr.P.C. ought to be quashed and set aside. In the present case it is seen that a show cause notice has been issued to the petitioner. On instructions the learned A.P.P. has made a categorical submission that no final order has been passed in the said chapter proceedings or on the application filed by the petitioner for dropping the chapter proceedings. The petitioner has replied to the show cause notice and the matter is pending consideration before the Special Executive Magistrate.

7. In this view of the matter, I am not inclined to quash the chapter proceedings at this stage. At this stage, in my opinion, it would be pre-mature to quash the proceedings against the petitioner. The Special Executive Magistrate, shall give sufficient opportunity to the petitioner to defend himself by leading evidence if necessary and thereafter, decide the proceedings and the application preferred by the petitioner. In case order is passed directing the petitioner to execute a final bond, he shall be given four days time to furnish bond and surety. In case the application of the petitioner for dropping the proceedings is decided against the petitioner, the said order shall not be acted upon for a period of four days thereafter.

8 Writ petition is disposed of in terms of the above

order.

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